

In the Matter of Merchant Mariner's Document No. Z-252023-D2 and all other Seaman Documents

Issued to: ROBERT KIMMONS

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1243

ROBERT KIMMONS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 12 July 1960, an Examiner of the United States Coast Guard at Galveston, Texas, suspended Appellant's seaman documents for six months outright plus six months on twelve months' probation upon finding him guilty of misconduct. The two specifications found proved allege that while serving as an ordinary seaman on board the United States SS AMOCO NEW YORK under authority of the document above described, on 6 July 1960, Appellant assaulted and battered Boatswain Elbert H. Ebanks and created a disturbance while the ship was at Texas City, Texas.

The Examiner accepted the Boatswain's testimony that Appellant struck the Boatswain in the eye and several times in the ribs. The Appellant's version that he acted in self-defense after the Boatswain struck the first blow was rejected by the Examiner as untruthful. Both Appellant and the Boatswain agreed that there were no other eyewitnesses to the incident.

Appellant's prior record consists of a three months' suspension in 1946 for abusive language to a superior officer and creating a disturbance; a probationary suspension in 1956 for absence without leave and inability to perform his duties.

OPINION

On appeal, it is contended that, at the hearing, Appellant was denied the right to subpoena witnesses; the Boatswain's testimony is contradictory; and the Examiner based his decision on Appellant's prior record. There is no merit to any of these contentions.

After Appellant testified, his counsel twice indicated that there were no other witnesses for Appellant. There is nothing in the hearing record to support the claim that the right to subpoena witnesses was denied.

The Boatswain's testimony was not contradictory and it agreed with Appellant's testimony that, leading up to the assault and

battery, Appellant had made derogatory remarks about the Boatswain's ability and called him a phony. As stated by the Examiner, there is uncontradicted testimony by the Boatswain that, shortly before the incident in question, Appellant threatened to "take" the Boatswain and other members of the crew.

The Examiner's decision does not indicate, in any manner, that he reached the conclusion that Appellant was guilty because of his prior record. On the contrary, the Examiner stated, as a finding of credibility, that he believed the Boatswain's testimony to be truthful and in agreement with the probabilities as to the circumstances under which he was hit by Appellant.

Although there is no reason to modify the order imposed, the finding that Appellant created a disturbance is reversed and this specification is dismissed because there is no evidence as to any disturbance other than that surrounding the assault and battery covered by the other specification.

#### ORDER

The order of the Examiner dated at Galveston, Texas, on 12 July 1960, is AFFIRMED.

J. A. Hirshfield  
Vice Admiral, United States Coast Guard  
Acting Commandant

Dated at Washington, D. C., this 7th day of June, 1961.